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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,319	07/15/2005	Philippe A. Tessier	6013-149us	3470

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EXAMINER

TSAY, MARSHA M

ART UNIT	PAPER NUMBER
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1656

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/517,319

Applicant(s)

TESSIER ET AL.

Examiner

Marsha M. Tsay

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                                  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>04/28/06; 07/19/06</u> | 6) <input type="checkbox"/> Other: _____   |

In a telephone interview on October 17, 2006 with Dr. Rochon, it was noted that the previous Office action was sent to Applicants is in error. The reply filed July 19, 2006 is fully responsive to the prior Office action sent April 19, 2006. Therefore, the previous Office action is withdrawn.

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1656.

This Office action is in response to Applicants' remarks received July 19, 2006. Claims 2, 4, 8-11, 13 are canceled. Claims 1, 3, 5-7, 12 are still at issue and are present for examination.

Applicants' arguments have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

It is also noted that the first Office action sent April 19, 2006, mistakenly identified the priority date to be July 5, 2003. The correct priority date is July 5, 2002 and is corrected in the instant action.

Priority: The priority date is July 5, 2002.

### **Objections and Rejections**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1656

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Hessian et al. (2001 Eur. J. Biochem. 268(2): 353-363). Hessian et al. teach antibody CF145 recognizes MRP-8 (S100A8) and MRP-14 (S100A9) proteins (p. 356, table I; claim 12).

Claim 12 is rejected under 35 U.S.C. 102(e) as being anticipated by Freeze et al. (US 20050118688). Freeze et al. teach aqueous compositions of mouse anti-human S100A8 and mouse anti-human S100A9 diluted in PBS (p. 35 [0305]; claim 12).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeze et al. (US 20050118688). Freeze et al. teach aqueous compositions comprising antibodies against S100A8 or S100A9 protein (p. 35 [0305]). In Figure 17, Freeze et al. disclose adhesion of neutrophils to the immobilized glycans present on endothelial cells is effectively inhibited by both anti-S100A9 and mAbGB3.1 (p. 24 [0235]). Antibody mAbGB3.1 is an anti-carbohydrate antibody generated against carboxylate-enriched desialyated bovine lung N-glycans (p. 16

[0162]). In example 34, Freeze et al. teach antibody mAbGB3.1 blocks acute peritoneal inflammation in a mouse model of colitis and Crohn's Disease by preventing neutrophil extravasation (p. 43 [0365]). Freeze et al. further disclose that since S100A8/9 are involved in inflammation and also bind to the carboxylated glycans recognized by antibody mAbGB3.1, this antibody or agents that mimic the carboxylated sugar chains are considered also to be useful for treating arthritis, diabetes, malignancy (p. 44 [0367]), asthma, and gout (p. 4-5 [0020]). Freeze et al. do not specifically teach the administration of anti-S100A8/9 into a subject.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to administer the anti-S100A8/9 composition of Freeze et al. into a mammalian subject for the treatment of arthritis because Freeze et al. disclose anti-S100A8/9 are effective in inhibiting the recruitment and activation of neutrophils (claims 1, 3, 5-7). The motivation to do so is given by Freeze et al., which teaches the administration of an analogous agent into a mammalian model.

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

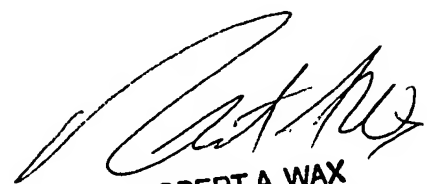
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marsha M. Tsay whose telephone number is 571-272-2938. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Kathleen Kerr can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 19, 2006

  
ROBERT A. WAX  
PRIMARY EXAMINER